IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ISRAEL ANDREW RIVERA, Petitioner.	2 CA-CR 2007-0146-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20044399

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Frank P. Leto
Tucson
Attorneys for Petitioner

P E L A N D E R, Chief Judge.

¶1 Petitioner Israel Rivera was charged with twenty-one felony counts, including multiple counts of sexual assault, aggravated assault of a minor, aggravated assault, burglary, and kidnapping. Pursuant to a plea agreement, he was convicted of five counts of sexual assault. The trial court sentenced Rivera to aggravated prison terms of fourteen years on each count, which the court ordered him to serve consecutively, for a total of seventy years. Rivera sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the trial court denied. This petition for review followed. Absent a clear abuse by the trial court of

its discretion to determine whether post-conviction relief is warranted, we will not disturb its ruling. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986).

¶2 Rivera argued below, as he does on review, that the cumulative total seventy-year prison term is not only cruel and unusual but also excessive for purposes of A.R.S. § 13-4037. He points to numerous factors that he contends constitute mitigating circumstances, including his low intelligence quotient (IQ), his mental health problems, and his difficult childhood, including having been abandoned by his mother. Relying on our supreme court's decisions in *State v. Bartlett*, 171 Ariz. 302, 830 P.2d 823 (1992), and *State v. Davis*, 206 Ariz. 377, 79 P.3d 64 (2003), Rivera contends the cumulative prison terms are unconstitutional and that this court should reduce the terms pursuant to § 13-4037. He maintains he "is an equally pathetic figure when compared to Bartlett and Davis," given his young age, low IQ, impulsiveness, "dysfunctional upbringing," and relative lack of a criminal record.

¶3 In a thorough and clear minute entry, the trial court addressed and properly disposed of Rivera's claims in a manner permitting review by this or any other court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by our rehashing the court's order in its entirety here. *Id*. However, we note that Rivera can hardly compare himself to the defendants in *Bartlett* or *Davis*. Twenty-three-year-old Bartlett and twenty-year-old Davis had engaged in consensual sex with their teenaged victims. As the trial court pointed out, Rivera invaded the homes of five different victims and sexually assaulted them. He "threatened to kill at least two of his victims if they did not submit to being raped. He used a gun in two of the assaults and a

knife in another. While assaulting one victim, he threatened to kill or rape her children if she screamed." Rejecting the comparisons to *Bartlett* and *Davis*, the trial court concluded, "Petitioner's crimes were serious, violent, and repetitive, indicating that Petitioner posed a significant threat both to his victims and to society." Nothing in the court's order or the record establishes that the court abused its broad discretion, either when it initially sentenced him or when it reconsidered and reaffirmed the sentences in light of the arguments raised in this post-conviction proceeding.[1] Therefore, we adopt the trial court's order denying post-conviction relief. We also decline Rivera's apparent invitation for this court to reduce his sentence pursuant to § 13-4037. *See State v. Long*, 207 Ariz. 140 n.6, 83 P.3d 618, 626 n.6 (App. 2004).

¶4 The petition for review is granted, but because Rivera has not sustained his burden of establishing that the trial court abused its discretion, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

[1]It is not clear to us that § 13-4037 is necessarily inapplicable to a pleading defendant, as the trial court suggested. Because such a defendant does not have the right to a direct appeal and may only seek post-conviction relief through Rule 32, Ariz. R. Crim. P., *see* Ariz. R. Crim. P. 17.1(e), that form of relief is the functional equivalent of a direct appeal for pleading defendants. *See State v. Ward*, 211 Ariz. 158, ¶ 9, 118 P.3d 1122, 1126-27 (App. 2005). But the trial court's ruling on this point is of no moment because the court also found that, if the statute were applicable, Rivera would not be entitled to relief nevertheless.

J. WILLIAM BRAMMER, JR., Judge